



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

5577-322

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on September 13, 2005Signature Typed or printed name Erin A. Campion

Application Number

09/954,951

Filed

September 18, 2001

First Named Inventor

John R. Hind

Art Unit

2176

Examiner

Robert Stevens

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 48,568

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_



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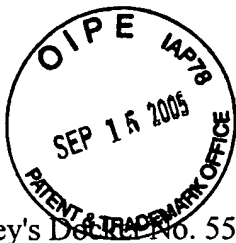
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**RESPONSE UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE EXAMINING GROUP 2176**

Attorney's Deposit No. 5577-322/RSW920010128US1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Hind *et al.*

Serial No.: 09/954,951

Filed: September 18, 2001

For: **LOW-LATENCY, INCREMENTAL RENDERING IN A CONTENT  
FRAMEWORK**

Confirmation No.: 8532

Group No.: 2176

Examiner: Robert Stevens

Date: September 13, 2005

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Commissioner for Patents

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Erin A. Campion

**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL  
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program.

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 09-0461.

**REMARKS**

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed May 13, 2005 and the Advisory Action mailed August 11, 2005. The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Claims 1-6, 10-16, 24-29, 32-33, 35, 42-44 and 46-49 stand rejected under 35 U.S.C. §

103(a) as being unpatentable over United States Patent No. 6,668,353 to Yurkovic (hereinafter "Yurkovic") in view of *HTML's META-tag: HTTP-EQUIV* by Alan Richmond (hereinafter "Richmond"). See Final Office Action, page 3. Claims 7-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yurkovic in view of Richmond in further view of United States Patent No. 6,453,361 to Morris. See Final Office Action, page 18. Claims 17-22, 30-31, 34, 36-40, 45 and 50-53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yurkovic in view of Richmond in further view of *SAMS Teach Yourself Web Publishing with HTML 4 in 21 Days, 2<sup>nd</sup> Edition* by Laura LeMay. See Final Office Action, page 20. Claims 23 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yurkovic in view of Richmond in further view United States Patent Publication No. 2002/0026500 to Kanefsky *et al.* See Final Office Action, page 25.

Applicants respectfully submit many of the recitations of the pending claims are not met by the cited combinations for at least the reasons discussed herein and in Applicants' previously filed Amendment of December 17, 2004 and Request for Reconsideration After Final of July 13, 2005. Therefore, Applicants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Applicants will only discuss the recitations of the independent Claims 1, 32 and 46.

Claim 1 recites:

A method of incrementally rendering content in a content framework:  
receiving a request for a portal page, wherein one or more portlets provide content for the portal page;  
**immediately returning a response message containing a first document, the first document representing results from portlets which have acquired their content;**  
and  
**programmatically generating a mechanism for delivering an updated document if the first document does not represent results of all portlets.**

Claims 32 and 46 contain corresponding system and computer program product recitations, respectively. Applicants respectfully submit that at least the highlighted recitations of Claim 1 are neither disclosed nor suggested by the cited combination.

The Final Office Action states that the following portion of Yurkovic teaches the receiving and immediately returning steps of Claim 1 (*See* Final Office Action, page 4):

A personal portal is a network search tool that defines a set of user-selected information requests. Whenever the user accesses the network through his personal portal, **the portal gathers information satisfying the specified requests from one or more network-based databases and presents that information to the user as a computer display with a composite format**, thereby providing the user with what is essentially his own personal, customized web page. One such personal portal service is the "My Netscape" portal provided by Netscape Communications Corporation of Mountain View, Calif.

*See* Yurkovic, column 1, lines 25-35. In other words, the background of Yurkovic discusses conventional portals, for example, "My Netscape", that gather all the information and then present the information to the user. In contrast, Claim 1 recites receiving a request for a portal page and **immediately returning** a first document representing results from portlets which have acquired their content. Thus, according to some embodiments of the present invention, the first document is returned immediately before all the information is gathered, *i.e.*, before all the portlets have acquired their content. **Accordingly, Applicants respectfully submit that the receiving and immediately returning steps of Claim 1 are not met by Yurkovic for at least the reasons discussed above.**

The Final Office Action admits that Yurkovic does not explicitly disclose "programmatically generating a mechanism for delivering an updated document if the first document does not represent results of all portlets" as recited in Claim 1. *See* Final Office Action, page 4. However, the Final Office Action points to Richmond as providing the missing teachings. *See* Final Office Action, page 4. Applicants respectfully disagree. The cited portion of Richmond discusses a META tag "that can be used by caches to determine when to fetch a fresh copy of the associated document." *See* Richmond, page 1. In other words, the data may be updated when the timer expires. In contrast, Claim 1 recites "programmatically generating a mechanism for delivering an updated document if the first document does not represent results of all portlets." In other words, according to some embodiments of the present invention, an updated document may be generated **if** the document does not include all of the portlets. **Accordingly, Applicants respectfully submit that the programmatically generating step of Claim 1 is not met by Richmond for at least the reasons discussed herein. Thus, many of**

**the recitations of Claim 1 are not met by any of the cited references either alone or in combination.**

**Furthermore, the Final Office Action fails to show proper motivation or suggestion to combine the cited references as suggested in the Final Office Action.** As affirmed by the Court of Appeals for the Federal Circuit in *In re Sang-su Lee*, a factual question of motivation is material to patentability, and cannot be resolved on subjective belief and unknown authority. See *In re Sang-su Lee*, 277 F.3d 1338 (Fed. Cir. 2002). It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983).

The Final Office Action states:

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the teachings of Richmond for the benefit of Yurkovic, because to do so would allow a programmer to automatically refresh a document as taught by Richmond in p. 1, middle of page discussing the HTTP-EQUIV = "Expires" attribute. These references were all applicable to the same field of endeavor, i.e., web pages/service design.

See Final Office Action, page 4. This motivation is a motivation based on "subjective belief and unknown authority", the type of motivation that was rejected by the Federal Circuit in *In re Sang-su Lee*. In other words, the Final Office Action does not point to any specific portion of the cited references that would induce one of skill in the art to combine the cited references as suggested in the Final Office Action. If the motivation provided in the Final Office Action is adequate to sustain the Office's burden of motivation, then anything in the "same field of endeavor" would render a combination obvious. This cannot be the case. Accordingly, the statement in the Final Office Action with respect to motivation does not adequately address the issue of motivation to combine as discussed in *In re Sang-su Lee*. Thus, it appears that the Final Office Action gains its alleged impetus or suggestion to combine the cited references by hindsight reasoning informed by Applicants' disclosure, which, as noted above, is an inappropriate basis for combining references.

Furthermore, even if Yurkovic and Richmond could be properly combined, the combination of Yurkovic and Richmond would teach a conventional portal having the capability

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of being refreshed upon expiration of a timer. Accordingly, even if the cited referenced could be properly combined, the cited combination fails to disclose or suggest the recitations of Claim 1.

Accordingly, for at least the reasons discussed above, many of the recitations of Independent Claims 1, 32 and 46 are not met by the cited combination. Therefore, Applicants respectfully request that the present application be reviewed and reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,



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